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Such a system was presented in the recent case of *Stewart* v. *Rawleigh Medical Co.* (Okla.), 159 Pac. 1187. The facts adduced in that case established that the Medical Company, who sold directly to the retailers, took from each retailer to whom it sold a contract by which the retailer agreed to sell all articles at the regular retail prices, which were to be indicated from time to time by the Medical Company. The Medical Company did not maintain retail establishments, and it was obvious that the retailers could not use the goods obtained in competition with the retained business of the Medical Company. The sole operation of the contracts was to oppress the retailer, without a corresponding benefit to the Medical Company, and to secure to the Medical Company an arbitrary control of prices on the retail market. The court properly held that the contract imposed an improper and unreasonable restraint upon trade and was, therefore, void under the federal Anti-Trust Act. It seems, however, that the reasoning in the opinion makes the nature of such contracts, as being ancillary or principal, depend upon the necessity for protection to the retained business, which, as indicated above, seems erroneous.

While the test to be applied in passing upon contracts to control prices should not be affected by the circumstance that a particular contract is not one of a general system, it seems to have been suggested that this fact may serve to reconcile some of the hostile decisions.[12] But this is plainly unsound; for, while a single contract in restraint of trade may not appreciably affect the public, it is equally as obnoxious on principle as one which forms a part of a general system and should be held invalid, unless it is ancillary to a principal contract of sale and reasonably necessary to protect the retained business.

IMPRISONMENT FOR REFUSAL TO EARN MEANS OF PAYING ALIMONY.—The peculiar power of a court of equity to enforce its decrees by contempt proceedings has been very generally exercised in giving effect to decrees for alimony. It has been strongly urged in opposition to this power that to commit one to prison for nonpayment of alimony where the defendant has sufficient funds in his possession is in contravention of the prohibition contained in most state constitutions against imprisonment for debt. This contention has been successfully refuted, however, both by reason of the fact that such punishment is applied because of the willful disobedience of a decree of the court,[1] and because a decree awarding alimony does not establish a mere technical debt within the meaning of such constitutional prohibitions but determines a legal duty

[12] This is probably the significance of the statement in Park & Sons Co. *v.* Hartman, *supra*, that, "The reasons which might uphold covenants restricting the liberty of a single buyer might prove quite inadequate when there are a multitude of identical agreements. A single covenant might in no way affect the public interest, when a large number might."

[1] Blake *v.* People, 80 Ill. 11.

or relation in which not only immediate parties but the public generally are interested.[2]

In determining what alimony should be awarded the courts have always held that the earning capacity of the husband is a proper element to take into consideration. The husband's duty to maintain his wife does not depend solely on his having visible property, but his capacity for earning must be estimated.[3]

Admitting that earning capacity is a proper element to be considered in awarding alimony, and that a decree of alimony is enforceable by contempt proceedings, the courts seem to have hesitated much in admitting the logical deduction that if alimony is decreed against one having no property he can be imprisoned for contempt for the nonpayment of alimony, when caused by his failure to work and earn money with which to discharge the alimony.

The courts, in thus denying themselves the right to punish one for contempt, who, having no property, has made no bona fide attempt to work and earn money with which to discharge the alimony, have rested their decision on two grounds: First, because it is said that if the court could punish one by imprisonment for not earning money with which to pay a decree for alimony, it could do so to enforce the payment of any other judgment.[4] The fallacy of this reasoning lies in the fact that a decree for alimony, as pointed out above, is essentially different from an ordinary judgment. The second reason for refusal to punish as for contempt in such a case is the difficulty of obtaining the desired result; it being said that to imprison for not working would in no way better the situation.[5] While this is a strong reason against punishing for contempt in such a case, it is submitted that such a reason does not go to the power of the court to punish, and that it should not be allowed to control. As stated in some of the adjudged cases, if the defendant is under the stress of attachment, he may discern ways and means of earning money that were once hidden from him; it may entirely change his disposition toward work.[6]

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[2] Lyon *v.* Lyon, 21 Conn. 185; Brouk *v.* State, 43 Fla. 461, 31 South. 248, 99 Am. St. Rep. 119; State *v.* King, 49 La. Ann. 1503, 22 South. 887; Carlton *v.* Carlton, 44 Ga. 216; Louis *v.* Louis, 80 Ga. 706, 6 S. E. 918; Wightman *v.* Wightman, 45 Ill. 167. *Contra*, Koughlin *v.* Ehlert, 39 Mo. 285. See, also, Steller *v.* Steller, 25 Mich. 159.

[3] Read *v.* Read, 28 Utah 297, 78 Pac. 675; Snedager *v.* Kincaid, 22 Ky. L. Rep. 1347, 60 S. W. 522; Pauly *v.* Pauly, 69 Wis. 419, 34 N. W. 512.

[4] Messerby *v.* Messerby, 85 S. C. 189, 67 S. E. 130, 137 Am. St. Rep. 873, 30 L. R. A. (N. S.) 1001.

[5] Webb *v.* Webb, 140 Ala. 262, 37 South. 96, 103 Am. St. Rep. 30. In Ex parte Todd, 119 Cal. 57, 50 Pac. 1071, it was held, without giving any reasons, that the court had no power to punish one for contempt for not working and earning money in order to pay alimony.

[6] Bleckley, J., in Lester *v.* Lester, 63 Ga. 357, speaking of the right of the court to punish one having no visible property for not paying alimony, says: "Under the stress of attachment, even the vision of the respondent himself may be cleared and brightened, so that he will discern ways and means which were once hidden from him, or seen obscurely. It is a great help to do a thing to feel that it must be done, and that there is no evading it."

Whatever may be the wisdom of the rule that a man without property who makes no reasonable effort to work and pay the sum directed in an order for alimony cannot be punished for contempt, upon strict legal reasoning, the court may under such circumstances punish for contempt; and it has been so held.[7] Upon consideration of the fact that contempt proceedings are within the wise discretion of the court, it would seem that, on principle, the court should have the right to punish one for contempt for not working and paying the alimony as decreed.

In the recent decision of *Fowler* v. *Fowler* (Okla.), 161 Pac. 227, the court, after an examination of both reason and authority, held that an able-bodied man who made no bona fide effort to secure employment in order to pay alimony awarded against him, even though he had no property, may be punished for contempt.

WHEN A DEED ABSOLUTE ON ITS FACE WILL BE CONSTRUED TO BE A MORTGAGE.—Under the old common law, when land was conveyed as security for a debt, unless the debtor complied strictly with the terms of the instrument of conveyance, title to the whole property vested immediately in the creditor upon default. On account of the severity of the case on the generally oppressed debtor, equity gradually assumed jurisdiction and gave the debtor additional time after the forfeiture within which to redeem his estate. This right, known as the equity of redemption, is the characteristic feature of mortgages.[1] The equity of redemption is not lost until the mortgagee forecloses the mortgage in a proper proceeding in equity, and even then only a sufficient sum is taken from the proceeds of the sale to satisfy the debt, the surplus going back to the mortgagor.[2]

Many attempts have been made by creditors to defeat the equity of redemption incident to a transfer of property as security for a debt by making the transaction in form a conditional sale or even an absolute conveyance. But no matter what the form of the transaction may be, if it is in essence a mortgage, equity will so hold.[3] A mortgage is always for the security of some obligation, and hence, if the conveyance is intended to secure an existing debt, it is necessarily a mortgage.[4] But the law does not prohibit condi-

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[7] Lester *v.* Lester, *supra;* Staples *v.* Staples, 89 Wis. 592, 58 N. W. 1036, 24 L. R. A. 433. See Muse *v.* Muse, 84 N. C. 35.

[1] See POWELL, MORTGAGES, p. 108; 2 TIFFANY, REAL PROP., § 506.

[2] See BISPHAM, EQ., pp. 200, 204.

[3] Russell *v.* Southard, 12 How. 139. See 3 POMEROY, EQ. JUR., 3 ed., § 1192.

[4] Enos *v.* Sutherland, 11 Mich. 538. See Wilcox *v.* Morris, 1 Murphy (N. C.) 116, 3 Am. Dec. 678, where the court said, "It may be laid down as a general rule, subject to few exceptions, that wherever a conveyance or an assignment of an estate is originally intended as a security for money, whether this intention appear from the deed itself or any other